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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,001	09/22/2003	Philip Martin McGenity	HO-P02110US2	1938

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EXAMINER	
SAYALA, CHHAYA D	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/668,001	MCGENITY ET AL.	
	Examiner	Art Unit	
	C. SAYALA	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 21-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 21-30 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Baasiouny et al. (Food Chem., vol. 37(4), p. 297-305, 1990).

The reference teaches a dough composition and plant extracts in the amounts claimed. Note that the extracts are well known in the art to freshen breath, and the terms "pet food" in the preamble have been given little weight because it is known in the art that pet foods use dough to make them and that a compound and its properties cannot be separated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aga et al. (US Patent 5922324) in view of the specification at page 2, lines 8-10.

Aga et al. teaches adding a particular breath-freshening agent, propolis extract, as those claimed herein to pet foods as oral-refreshing agents. Amounts for adults are shown, however, it would have been obvious to use appropriate amounts for dogs depending on the composition intended as well as the size of the dog. See col. 5, lines 5-10, 14 and 50-53. The specification teaches that the addition of breath-freshening active ingredients to pet foods is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate such an extract in pet foods. It is know in the art that pet foods are generally made from dough compositions, and Example B-5 shows that the extract can be incorporated in dough compositions and baked. Note the amounts used.

3. Claims 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaglione et al. (US Patent 5000973) in view of CFR, Title 21, Part 101, Subpart B, Sec. 101.22 and further in view of Nabi et al. (US Patent 5472684).

Scaglione et al. teach a dough composition that contains natural flavors intended for a dog. See Tables 2 and 4. The composition is nutritionally balanced and contains a tartar preventing agent. The natural flavors are not disclosed as being breath freshening. CFR Title 21 defines what is meant by

"natural flavors", which includes essential oils and plant extracts, fruit juices, oleoresins, etc. Nabi et al. teach a composition that contains tea tree oil, and eucalyptus, in the same ranges as claimed herein, and further disclose that such flavoring agents enhance antiplaque and antigingivitis activity. For this reason, it would have been obvious to one of ordinary skill in the art to add such agents to the Scaglione composition that calls for natural flavorants with the reasonable expectation that it would aid in antiplaque and antigingivitis activity, where the Scaglione invention is drawn to reduce or prevent tartar accumulation (see col. 1, lines 1-20 in '973).

Response to Arguments

Applicant's arguments filed 9/7/2004 have been fully considered but they are not persuasive.

The reference to Bassiouny et al. teach adding plant extracts to dough. The extracts are the same and are known to freshen breath. A compound and its properties are inseparable. . In re Papesch, 137 USPQ 43 (CCPA 1963). Applicant is reminded that these are composition claims and the elements, dough and plant extract have been met. Inherent properties of known compositions are not patentable. In General Electric Co. v. Hoechst Celanese Corp. 16 USPQ 2d 1977. The rejection is being maintained.

It is true that Aga et al. teach a laundry list that includes a food product. This is the reason that his rejection is being made under 35 USC 103. Again, even though the reference teaches the other properties, the composition is met. Applicant states that "Aga does not teach nor suggest that the propolis can be

used to improve oral malodour in domestic animals". Applicant is reminded that these are not method of use claims, but composition claims and the composition has been met. Applicant states that propolis is stored in beehives. While this may be true, they are plant extracts, nonetheless.

Scaglione et al. teach natural flavors in a dough composition that are antiplaque. The CFR title teaches what such natural flavors are and Nabi et al. teach their usefulness as anti-plaque promoting compositions. Applicant states that the reference does not teach that they are breath-freshening. However, these are composition claims and it is well established that an "Assertion that examiner combines prior art references for purpose different from that envisioned by inventors does not warrant reversal of examiner's finding of obviousness". Ex parte Raychem Corp 17 USPQ2d 1417.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. Sayala

C. SAYALA
Primary Examiner
Group 1700.